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Comfortable Satisfaction Before the Court of Arbitration for Sport: Consistency Despite Differences?

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Abstract

The Court of Arbitration for Sport's privileged position lends considerable authority to its adjudication practice, which gives rise to a number of principles that are subsequently adopted into general application. One of these principles is the standard of proof referred to as "comfortable satisfaction". However, its application raises several theoretical and practical issues. An analysis of publicly available awards shows that there are different approaches to this standard across arbitral panels, which, in the eyes of theory, considerably affect the process of evidence. This contribution therefore seeks to present these different approaches against the backdrop of an analysis of available awards and academic debates, and to answer the question of whether these differences, translated into practice, cause inconsistencies within decision-making practice.

Keywords

Court of Arbitration for Sport; Lex Sportiva; Standard of Proof; Comfortable Satisfaction; Variable Approach; Constant Approach; Consistency.

1 Introduction

The Court of Arbitration for Sport ("CAS") is arguably the most well-known specialized arbitration institution in the world. It represents an independent pinnacle of sports arbitration that serves as a platform for binding dispute resolution of cases related directly or indirectly to the world of sport. Its extraordinary status is associated with forming an autonomous law referred

to as *lex sportiva*.[1] The scope of this concept varies from author to author.[2] However, it is beyond any doubt that the CAS utilizes, within the scope of its operation, general[3] as well as sport-specific legal principles.[4] These principles are either borrowed from existing legal regulations, or created and formed by the CAS itself (which affects future regulatory framework).

One of the principles that have been introduced into the world of sports arbitration by the CAS is a standard of proof referred to as "comfortable satisfaction". Its emergence is generally associated with an award dating back to the year 1996. The year 2021 thus marks a quarter of a century of its application in the realm of sports-related arbitration. Throughout this period, it has been subject to lengthy discussions not only among scholars, but also among practicing lawyers and athletes acting as parties to CAS proceedings. Eventually, it has made its way to become a universally accepted standard for doping and other disciplinary proceedings. Its role is even so significant that it is at times regarded as a constituent part of the aforementioned *lex sportiva*.[5]

This contribution first outlines the methods of determining the applicable standard of proof in proceedings before the CAS. The following section is devoted to a succinct introduction of the development of the comfortable satisfaction standard of proof and of the position it occupies in the domain of sports arbitration. The third part seeks to assess how the comfortable satisfaction standard fits into the framework of doping and other disciplinary proceedings, and whether it strikes a reasonable balance of the interests involved. The fundamental objective of this contribution is to assess, through

1 IOANNIDIS, G. The Influence of Common Law Traditions on the Practice and Procedure Before the Court of Arbitration for Sport (CAS). In: DUVAL, A. and A. RIGOZZI (eds.). *Yearbook of International Sports Arbitration 2015*. The Hague: T. M. C. ASSER PRESS, 2016, pp. 28–29.

2 DUVAL, A. Lex Sportiva: A Playground for Transnational Law. *European Law Journal*, 2013, Vol. 19, no. 6, p. 827.

3 *Foster* excludes general legal principles from the concept of *lex sportiva*, claiming that they apply *"as a matter of the rule of law in sport"*. – FOSTER, K. Lex Sportiva and Lex Ludica: the Court of Arbitration for Sport's Jurisprudence. *Entertainment and Sports Law Journal* [online]. 27. 6. 2016 [cit. 28. 5. 2021]. Available at: https://www.entsportslawjournal.com/article/id/722/

4 CASINI, L. The Making of a Lex Sportiva: The Court of Arbitration for Sport "Der Ernährer". *SSRN* [online]. 6. 6. 2010 [cit. 28. 5. 2021]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1621335&download=yes

5 Award of the CAS of 27 July 2018, Case 2017/A/5003, para. 175.

an analysis of publicly available CAS awards and scholarly discussions, whether the comfortable satisfaction standard is treated uniformly across different arbitral panels, or whether there are diverging treatments that would entail practical implications for decision-making practice.

2 Standard of Proof and Its Determination Before the CAS

The fundamental premise for this section is that all arbitration proceedings before the CAS have their seat in Lausanne, Switzerland. This applies to ordinary proceedings[6], *ad hoc* Olympic divisions[7], as well as the CAS Anti-Doping Division[8], regardless of the place of the hearing or the place where the Olympic Games are held.

The seat of arbitration provides the fundamental legal framework for international sports-related arbitration that is to be found in the Swiss Private International Law Act[9] ("IPRG"). Procedural issues are in general regulated by Art. 182 IPRG. This provision favors and promotes party autonomy by allowing the parties to the proceedings to *"directly or by reference to rules of arbitration regulate the arbitral procedure; they may also subject the procedure to the procedural law of their choice"*.[10] Should the parties not avail themselves of the opportunity to regulate procedural issues, *"it shall be fixed, as necessary, by the arbitral tribunal either directly or by reference to a law or rules of arbitration"*.[11]

In the context of arbitration proceedings conducted before the CAS, this framework results in the application of the corresponding provisions of the Code of Sports-related Arbitration ("CAS Code").[12] Although the CAS

6 *"The seat of CAS and of each Arbitration Panel (Panel) is Lausanne, Switzerland."* – R28 CAS Code.

7 *"The seat of the ad hoc Division and of each Panel is in Lausanne, Switzerland. The arbitration is governed by Chapter 12 of the Swiss Act on Private International Law."* – Art. 7 CAS Arbitration Rules for the Olympic Games.

8 *"The seat of CAS ADD and each Arbitration Panel is Lausanne, Switzerland."* – A3 Arbitration Rules CAS Anti-Doping Division.

9 Federal Act on Private International Law of 18 December 1987 (original: Bundesgesetz über das Internationale Privatrecht vom 18. Dezember 1987).

10 Art. 182 para. 1 IPRG.

11 Art. 182 para. 2 IPRG.

12 R27 CAS Code; RIGOZZI, A. and B. QUINN. Evidentiary Issues Before CAS. *SSRN* [online]. 30. 5. 2014 [cit. 30. 5. 2021]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2438570

Code contains a thorough regulation of procedural issues, the question of the applicable standard of proof remains a gap in its construction. Neither the CAS Code, nor Chapter 12 IPRG contain an explicit provision to this effect. It is therefore necessary to turn again to Art. 182 IPRG and to seek a solution primarily in an agreement between the parties to the dispute. This agreement will generally be embodied in the athlete's admission to the respective association. The athlete's affiliation to the association obliges them to abide by the rules laid down in its internal regulations. These regulations regularly contain explicit provisions on the applicable standard of proof in disciplinary proceedings. These stipulations are generally upheld[13], without prejudice to the traditional constraint of public policy. This practice, however, implies that associations are free to adopt different standards of proof for these issues, unless there is an overarching regulation, such as, for instance, the World Anti-Doping Code ("WADC") for disciplinary doping cases. These conclusions were endorsed by the Panel in the *Köllerer* case stating: *"There is no universal (minimum) standard of proof for match-fixing offenses.* […] *While the Panel acknowledges that consistency across different associations may be desirable, in the absence of any overarching regulation, each association can decide for itself which standard of proof to apply, subject to national and/or international rules of public policy. The CAS has neither the function nor the authority to harmonize regulations by imposing a uniform standard of proof, where* […] *an association decides to apply a different, specific standard in its regulations."*[14]

Should the applicable regulations contain no explicit provision stipulating the applicable standard of proof, it is then for the arbitral panel to determine it for the case at hand, in compliance with Art. 182 para. 2 IPRG.[15]

As for the applicable standards of proof, adjudicating authorities utilize essentially two standards of proof. On the one hand, it is the "beyond a reasonable doubt" standard that acts as a correlate of the principle of *in dubio pro reo* and that is therefore traditionally applied in criminal law cases. On the other hand, civil law proceedings generally apply the "balance

13 Award of the CAS of 24 February 2012, Case 2011/A/2426, para. 81; Award of the CAS, Case 2011/A/2625, para. 152.

14 Award of the CAS of 23 March 2012, Case 2011/A/2490, para. 29.

15 Award of the CAS of 2 August 2017, Case 2016/A/4871, para. 127; Award of the CAS of 29 September 2016, Case 2016/A/4558, para. 70; Award of the CAS of 17 July 2020, Case 2018/A/6075, para. 46.

of probabilities" standard. In the realm of sports, internal disciplinary regulations of several sports associations and federations stipulate different standards of proof referred to as "personal conviction" or "comfortable satisfaction". It is the latter standard that forms the central part of this contribution which aims to assess whether it receives uniform application across different CAS arbitral panels, or whether there are material differences in its treatment that might hinder or upset the CAS' endeavour to harmonize international sports adjudication.

3 The Status of the Comfortable Satisfaction Standard Before the CAS

The origins of the comfortable satisfaction standard of proof in sports arbitration before the CAS date back to the year 1996. At that time, the first ever CAS *ad hoc* division was established to resolve disputes arising in the course of the Games of the XXVI Olympiad held in Atlanta, Georgia (USA). A total of 10 318 athletes participated[16], several of whom tested positive for a substance called bromantane.[17] Although statistics report only seven cases of positive doping findings[18], it is possible (or even likely) there were many more. The reason for such a low number may have been the underdeveloped fight against doping at the time, as well as the use of methods that were unable to detect certain substances. In addition to that, the International Olympic Committee ("IOC") feared not only actions taken by athletes themselves but also the economic consequences of losing sponsors due to the tarnished image.[19]

16 Atlanta 1996. *Olympic Channel Services S.L. 2021* [online]. [cit. 28. 5. 2021]. Available at: https://olympics.com/en/olympic-games/atlanta-1996

17 Due to the increase in the number of positive findings, some authors and athletes referred to the Atlanta Games as *"Growth Hormone Games"*. – HOLT, R. I. G., I. EROTOKRITOU-MULLIGAN and P. H. SÖNKSEN. The history of doping and growth hormone abuse in sport. *Growth Hormone & IGF Research*, 2009, Vol. 19, no. 4, p. 321; Others perceived them as *"a carnival of sub-rosa experiments in the use of performance-enhancing drugs"*. – MORGAN, W. J. Fair is Fair, Or Is It?: A Moral Consideration of the Doping Wars in American Sport. *Sport in Society*, 2006, Vol. 9, no. 2, p. 177.

18 Doping Cases at the Olympics. *Encyclopaedia Britannica* [online]. [cit. 30. 5. 2021]. Available at: https://sportsanddrugs.procon.org/doping-cases-at-the-olympics/

19 BELL, R. It's Time to Work Together to Stop Doping in Sports [online]. *The Sport Journal* [cit. 28. 5. 2021]. Available at: https://thesportjournal.org/article/its-time-to-work-together-to-stop-doping-in-sports/

The CAS *ad hoc* division in Atlanta handled a total of six cases[20], two of which concerned positive findings and the question of the applicable standard of proof. With regard to, and perhaps influenced by, the below outlined discussion on the nature of disciplinary doping proceedings, the Panel first stated in general terms that *"the standard of proof of the ingredients necessary to establish the offence of doping is greater than a mere balance of probabilities but less than a standard which may be expressed as proof beyond reasonable doubt"*.[21] This conclusion recognized the specific nature of doping proceedings as well as the drastic consequences of the sanctions imposed. The Panel went on and clarified that *"the ingredients must be established to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made"*.[22] The Panel further elaborated on this last condition by stating that *"the more serious the allegation being considered the greater is the degree of evidence which is required to achieve the requisite degree of comfortable satisfaction necessary to establish the commission of the offence"*.[23]

The presented findings instantly found their place in the case law of the CAS. Arbitral panels and arbitrators readily applied the established standard and its rationale in doping and other disciplinary proceedings where the regulations of the respective associations failed to explicitly provide for the applicable standard of proof. This may be illustrated by the case of four young professional swimmers who tested positive for the presence of a prohibited substance. Throughout the proceedings, they relied on the application of the criminal standard of beyond a reasonable doubt. The Panel, however, flatly rejected this claim and explicitly referred to the CAS *ad hoc* division award OG/96/003-004 and the comfortable satisfaction standard of proof developed therein. In addition, the Panel expressly stated that *"to adopt a criminal standard is to confuse the public law of the state with the private law of an association"*.[24] This again is to be understood as a reflection of the theoretical debate outlined below. Other awards fundamentally followed this line of reasoning.

20 History of the CAS. *Court of Arbitration for Sport* [online]. [cit. 24. 5. 2021]. Available at: https://www.tas-cas.org/en/general-information/history-of-the-cas.html

21 Award of the CAS Ad Hoc Division – Atlanta 1996 of 4 August 1996, Case OG/96/003-004, p. 17.

22 Ibid.

23 Ibid., p. 18.

24 Award of the CAS of 22 December 1998, Case 98/208, para. 13.

At that time, however, the comfortable satisfaction standard suffered one fundamental drawback. Its application was limited only to cases where the regulations of the respective associations did not explicitly provide for the applicable standard of proof. This caused fragmentation in decision-making, since the conclusion of a potential anti-doping rule violation in relation to the applicable standard of proof depended on the athlete's affiliation to the respective association.[25] This state of affairs was undesirable in view of the intensifying fight against doping in professional sport and the endeavour to harmonize this fight across federations.

A turning point in this development was achieved with the adoption of the WADC in 2003, in effect since 2004, which represents the overarching regulation for doping proceedings. Although the WADC has already undergone four amendments since its adoption, the applicable standard of proof has remained unchanged. The WADC provides the following general definition: *"The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."*[26] It is clear from the wording of this provision that the WADC draws inspiration not only from the OG/96/003-004 award, but also from the constant CAS case law that utilized this standard prior to the adoption of the WADC. This fact led *Straubel* to conclude that it is the CAS that developed this standard and that will continue its refinement, despite its embedment in the WADC.[27]

The comfortable satisfaction standard is, however, not limited to anti-doping rule violation proceedings only. Other disciplinary proceedings in the realm of sport utilize this standard as well, despite the absence of any overarching

25 For example, *Straubel* illustrated that the International Association of Athletics Federations (IAAF) utilized the standard of beyond a reasonable doubt, whereas the International Swimming Federation (FINA) used the preponderance of the evidence standard. – STRAUBEL, M. Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better. *Loyola University Chicago Law Journal*, 2005, Vol. 36, no. 4, p. 1266.

26 Art. 3.1 WADC.

27 STRAUBEL, M. Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better. *Loyola University Chicago Law Journal*, 2005, Vol. 36, no. 4, p. 1266.

regulation as in the case of doping. In the previous part of this contribution, it was mentioned that internal regulations of some associations provide for a standard referred to as "personal conviction"[28]. Nevertheless, the CAS case law has concluded that *"in practical terms, this standard of proof of personal conviction coincides with the "comfortable satisfaction" standard widely applied by CAS panels in disciplinary proceedings* […] [and therefore] *the Panel will give such a meaning to the applicable standard of proof of personal conviction"*.[29] This reasoning has never been contested.[30] Quite on the contrary, the consistency of these conclusions has led to amendments in the formulation of the applicable standard of proof in favor of the comfortable satisfaction. Take as an example the FIFA (International Federation of Association Football) Disciplinary Code whose 2019 edition provides for the comfortable satisfaction standard[31], whereas the 2017 edition speaks of deciding *"on the basis of their personal convictions"*.[32]

It is apparent from this brief outline that the comfortable satisfaction standard has, over the years, become an integral part of the CAS adjudication across disciplinary proceedings.

4 Comfortable Satisfaction on the Verge of Criminal and Civil Law Aspects of Sports Disciplinary Proceedings

The question of the applicability of criminal law principles in doping and other disciplinary proceedings has been a hotly debated and controversial issue among scholars.[33] Although the present author believes that the resolution of this controversy has already become part of the settled case law, it is still possible to come across relatively recent awards and scholarly articles addressing this question. For the purposes of the present contribution,

28 In French *"intime conviction"*.

29 Award of the CAS of 24 February 2012, Case 2011/A/2426, para. 88.

30 Supporting these conclusions, e.g., Award of the CAS of 8 March 2012, Case 2011/A/2425; Award of the CAS of 21 March 2014, Case 2013/A/3323; Award of the CAS of 5 December 2016, Case 2016/A/4501; Award of the CAS of 24 August 2017, Case 2016/A/4831; Award of the CAS of 9 February 2018, Case 2017/A/5086; Award of the CAS of 27 July 2018, Case 2017/A/5003.

31 Art. 35 para. 3 FIFA Disciplinary Code 2019.

32 Art. 97 para. 3 FIFA Disciplinary Code 2017.

33 DOWNIE, R. Improving the Performance of Sport's Ultimate Umpire: Reforming the Governance of the Court of Arbitration for Sport. *Melbourne Journal of International Law*, 2011, Vol. 12, no. 2, p. 82.

the author considers it appropriate to pay attention to this discussion, as its conclusions allow us to assess how the comfortable satisfaction standard fits into the framework of international sports arbitration. Should the scholars and case law come to the conclusion that criminal law principles should be applied by analogy in disciplinary proceedings, it would inevitably lead to the application of the principles of *in dubio pro reo* and its inherent correlate of the standard of beyond a reasonable doubt. On the other hand, a purely civil law perception of disciplinary proceedings would preclude any consideration of higher procedural standards to be applied. Consequently, the civil law standard of "on the balance of probabilities" should apply.

The civil law perception emphasizes the relationship between the athlete and the respective association, characterizing it as a contractual relationship. Sports associations are civil law entities, and an athlete becomes a member of such an association once they submit to the regulations of the association they want to be part of. It may be objected that this relationship lacks the element of voluntariness, since the athlete is left with no choice. If they want to participate as a professional in the given sport, they have no choice but to become a member of the respective association. However, such a conclusion cannot suppress the existence of a contractual civil law relationship between the athlete and the association.[34] The violation of the association's regulations that the athlete bound themselves to abide by, as well as the subsequent disciplinary proceedings thus necessarily take place in the sphere of the law of associations, that is civil law. This conclusion was expressly followed in an advisory opinion, stating: *"It is generally accepted that an association may impose disciplinary sanctions upon its members if they violate the rules and regulation of the association. The jurisdiction to impose such sanctions is based upon the freedom to associations to regulate their own affairs.* […] *Disciplinary sanctions imposed by associations are subject to the civil law and must be clearly distinguished from criminal penalties."*[35] Moreover, the famous decision of the Swiss Federal Tribunal ("SFT") in *Gundel vs. FEI (International Equestrian Federation)* declared the civil

34 For instance, Award of the CAS of 9 July 2001, Case 2001/A/317, para. 26 states – *"As a preliminary remark the Panel wishes to clarify that the legal relations between an athlete and a federation are of a civil nature and do not leave room for the application of principles of criminal law."*

35 Advisory opinion of the CAS of 21 April 2006, Case 2005/C/976&986, para. 125, 127; Award of the CAS of 15 July 2008, Case 2008/A/1583&1584.

law nature of disciplinary sanctions, since *"it is generally accepted that the penalty prescribed by regulations represents one of the forms of penalty fixed by contract* […] [and therefore] *has nothing to do with the power to punish reserved by the criminal courts"*.[36] This decision served as a basis for several CAS panels concluding that *"consequently only civil law standards and civil procedural standards can apply to any review of penalties imposed by associations, which include doping sanctions"*.[37] Other panels have also drawn inspiration from the SFT's decision[38], concluding *inter alia* that the CAS is not a criminal court and therefore cannot apply criminal law[39], or that the application of the criminal law standard of beyond a reasonable doubt *"is to confuse the public law of the state with the private law of an association"*.[40]

In opposition to the purely civil law perception stand views that point out similarities with certain aspects of criminal law regulation. These are mostly focused on sanctions that are imposed in sports disciplinary proceedings. The primary objective of these sanctions is to punish conduct that is contrary to disciplinary rules, a feature typical of criminal law penalties.[41] The penal character of the sanctions imposed is also perceived when analyzing the functions pursued by these penalties. While civil law emphasizes redress of the damage caused, the sanctions imposed as a result of disciplinary proceedings aim at taking away the undue advantage gained and at punishing the offender.[42] These objectives bespeak of the repressive function

36 DOWNIE, R. Improving the Performance of Sport's Ultimate Umpire: Reforming the Governance of the Court of Arbitration for Sport. *Melbourne Journal of International Law*, 2011, Vol. 12, no. 2, p. 82.

37 Award of the CAS of 28 January 2002, Case 2001/A/345, para. 21.

38 Award of the CAS of 22 March 2002, Case 2001/A/337, para. 27 – *"there is no room to apply concepts of criminal law such as the presumption of innocence or the standard of proof of beyond reasonable doubt"*; Award of the CAS of 13 November 2006, Case 2006/A/1102&1146, para. 52 – *"disciplinary sanctions imposed by associations are subject to the civil law and must be clearly distinguished from criminal penalties"*; Award of the CAS of 25 November 2009, Case 2009/A/1912&1913, para. 55 – *"the standard of proof beyond reasonable doubt is typically a criminal law standard that finds no application in anti-doping cases"*.

39 Award of the CAS Ad Hoc Division – Nagano 1998 of 12 February 1998, Case OG 98/002, para. 26.

40 Award of the CAS of 22 December 1998, Case 98/208, para. 13; Award of the CAS of 7 June 1999, Case 98/211, para. 26.

41 SOEK, J. The Legal Nature of Doping Law. *The International Sports Law Journal*, 2002, Vol. 1, no. 2, p. 3.

42 Ibid., p. 5.

of the sanctions imposed.[43] Take as an example a case of a professional athlete who is found guilty of an anti-doping rule violation. In this case, the WADC allows for several sanctions to be imposed, *inter alia* disqualification of individual results[44], ineligibility[45], forfeited prize money[46], and fines[47]. Such sanctions often not only prevent an athlete from practicing their trade, but also damage their reputation which inevitably brings with it substantial economic consequences in the form of loss of sponsors. Thus, although these sanctions are not imposed as a consequence of a violation of criminal law, their impact on the athlete might be harsher than, for instance, the imposition of a suspended sentence by a criminal court.[48] This reasoning led *Soek* to conclude: *"There must be no misunderstanding over the fact that disciplinary doping law is not criminal law and will never be criminal law, but in the framework of the law of associations it is a kind of criminal law, at least, a system of imposing sanctions that should have criminal law principles and concepts applied to it."*[49]

All of the above resulted in the pronouncement of a quasi-criminal nature of disciplinary proceedings. Arbitrators and the respective arbitral panels recognize this specificity by concluding that *"because of the drastic consequences of a doping suspension on the athlete's exercise of his/her trade it is appropriate to apply a higher standard than the general standard required in civil procedure, namely simply having to convince the court on the balance of probabilities"*.[50] Recognition of this specific nature is also expressed in the WADC that explicitly states:

43 ZAKSAITE, S. and H. RADKE. The Interaction of Criminal and Disciplinary Law in Doping-Related Cases. *The International Sports Law Journal*, 2014, Vol. 14, no. 1–2, p. 117.

44 Art. 10.1 WADC.

45 Art. 10.2–10.7 WADC.

46 Art. 10.11 WADC.

47 Art. 10.12 WADC.

48 TARASTI, L. Interplay Between Doping Sanctions Imposed by a Criminal Court and by a Sport Organization. *The International Sports Law Journal*, 2007, Vol. 7, no. 3–4, p. 16.

49 SOEK, J. The Legal Nature of Doping Law. *The International Sports Law Journal*, 2002, Vol. 1, no. 2, p. 6; It is important to note that some countries criminalize doping-related offences, either as doping *per se*, or as a crime of possession or use of specified substances. This line of the problem must, however, be separated from the regulation of disciplinary proceedings. Nevertheless, this does not preclude the possibility of dealing with the same conduct in both proceedings without infringing the *ne bis in idem* principle. – TARASTI, L. Interplay Between Doping Sanctions Imposed by a Criminal Court and by a Sport Organization. *The International Sports Law Journal*, 2007, Vol. 7, no. 3–4, p. 16.

50 Award of the CAS of 28 January 2002, Case 2001/A/345, para. 22; Award of the CAS of 23 January 2003, Case 2002/A/385, para. 10.

"Sport-specific rules and procedures, aimed at enforcing anti-doping rules in a global and harmonized way, are distinct in nature from criminal and civil proceedings. They are not intended to be subject to or limited by any national requirements and legal standards applicable to such proceedings, although they are intended to be applied in a manner which respects the principles of proportionality and human rights."[51]

There is another pragmatic reason for rejecting the criminal law standard of proof that goes hand in hand with another characteristic feature of doping proceedings, namely the strict liability principle. Its application is based on the fact that private law associations do not possess competence that would allow them to obtain evidence to an extent comparable to that of the police or prosecution in criminal cases. This fact has been considered on a number of occasions in CAS awards in which the panels pointed out the limited investigatory powers of these bodies and stressed the proper consideration of this limitation when assessing evidence.[52]

Based on the above, the present author considers the comfortable satisfaction standard to be a solution that strikes a reasonable balance between the interests of the respective sports associations on the one hand, and the interests of the athletes on the other hand. Such a construction fits well within the framework of sports disciplinary proceedings.

5 Treatment of the Comfortable Satisfaction Standard by the CAS

It has been pointed out in the previous sections of this contribution that the "comfortable satisfaction" standard has developed into the primary and generally accepted standard of proof applied in doping and other disciplinary proceedings before the CAS. At the same time, it has been held that its construction reflects the specific nature of these proceedings and, in conjunction with other principles applied, strikes a reasonable balance of competing interests.

51 World Anti-Doping Code 2021. *World Anti-Doping Agency* [online]. Pp. 17–18 [cit. 30. 5. 2021]. Available at: https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf

52 E.g., Award of the CAS of 23 January 2003, Case 2002/A/385, para. 11; Award of the CAS of 16 November 2018, Case 2018/A/5511, para. 675.

However, as will be seen below from the analysis of publicly available awards that address in greater detail the issue of the applicable standard of proof, despite its origins in CAS adjudication and efforts to apply this standard uniformly, it may be observed that the question of its interpretation is not uniform across different CAS panels. The aim of this section is therefore to analyze selected awards, present the different ways of dealing with this standard and then assess whether the existing differences in its treatment have any practical implications for the outcome of the decision-making process.

5.1 Two Conceptions of the Comfortable Satisfaction Standard

5.1.1 Variable

The first conception of the comfortable satisfaction considers it a variable standard. This approach implies that the level of proof required varies depending on the seriousness of the case at hand. The starting point for this approach is the definitions articulated in a plethora of CAS awards rendered by various arbitral panels, as well as the definition provided for in the WADC. The definition reads: *"The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel,* ***bearing in mind the seriousness of the allegation which is made****. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."* [53]

The sentence in bold serves as the main argument for this approach. Its proponents argue that the requirement to give due consideration to the allegations made is tantamount to saying that the more serious the allegation, the higher level of proof will be required by the arbitral panel to achieve its comfortable satisfaction. Conversely, less serious allegations under this concept require a lower degree of proof for the panel to be comfortably satisfied. Such a variable concept is therefore dependent on the nature of the particular case and does not permit an *a priori* determination of whether the standard will be closer to the criminal standard of beyond a reasonable doubt, or whether it will approximate the civil standard on the balance of probabilities.

53 Art. 3.1 WADC.

One of the first publicly available CAS awards to explicitly adopt the variable approach to the comfortable satisfaction standard concerned the dispute between *Sivasspor Kulübü vs. UEFA (Union of European Football Associations)*. The Turkish football club *Sivasspor* was found ineligible for the 2014/15 UEFA European League and was fined for match-fixing in which several players and club officials were involved. According to the applicable regulations, as well as in conformity with the consent expressed when signing the Admission Criteria Form, the comfortable satisfaction standard was applied to the case. The Panel first pointed out that the applicable regulations did not provide for a definition of this standard and that it would therefore rely on the settled case law of other CAS panels. Eventually, the Panel, bearing in mind the requirement to consider the seriousness of the allegation made, stated: *"It follows from the above that this standard of proof is then* ***a kind of sliding scale****, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be comfortable* [sic] *satisfied."*[54] These conclusions have been repeated on a number of occasions, often with explicit reference to this award.[55]

Different expression of the same concept may be illustrated by the case *Farnosova vs. IAAF (International Association of Athletics Federations) & ARAF (All Russia Athletics Federation)*. This case concerned an alleged anti-doping rule violation based on the athlete's biological passport, an indirect method that allows conclusions to be drawn about the use of a prohibited substance or method based on the analysis of a set of samples collected over a certain period of time. Although the Panel did not refer to the applicable standard as to a sliding scale, it concluded that *"it clearly follows from the applicable provision that the applicable standard of proof* ***is flexible****. The threshold that the IAAF must meet is higher depending on the seriousness of the allegation".*[56]

Another group of cases is represented by awards that likely follow the variable approach, without explicitly stating so. Support for this claim

54 Award of the CAS of 3 November 2014, Case 2014/A/3625, para. 132.

55 Award of the CAS of 2 September 2014, Case 2014/A/3628, para. 123; Award of the CAS of 24 September 2020, Case 2017/A/5444, para. 257 – This award considers the variable conception to be a *"well-established CAS jurisprudence"*; Award of the CAS of 1 February 2019, Case 2018/O/5667, para. 86; Award of the CAS of 1 February 2019, Case 2018/O/5668, para. 90.

56 Award of the CAS of 27 July 2018, Case 2017/A/5045, para. 84.

may be found in the wording of their conclusions. The most prominent examples may be cases that equate the comfortable satisfaction standard and the criminal standard of beyond a reasonable doubt in cases of particularly serious allegations.[57] Another example is provided by the CAS award in Case 98/211 which explicitly refers to the test adopted by the *ad hoc* division in Atlanta and further concludes: *"The Panel further accepts that, inasmuch as an allegation of manipulation includes an element of mens rea and attributes dishonesty to an athlete (whereas other doping offenses may be ones of strict liability), such an allegation bespeaks an extremely high degree of seriousness."*[58] This conclusion, in the light of the comparison with anti-doping rule violation cases governed by the strict liability principle, marks the Panel's inclination towards the variable concept of the comfortable satisfaction standard.

The last conclusion leaves open the question of whether, in relation to the concept of the comfortable satisfaction standard, it is permissible to classify within a certain group of disciplinary proceedings, for instance among individual anti-doping rule violations. As an example, consider the case of the German speedskater *Pechstein* who faced doping charges on the basis of a biological passport analysis. *Pechstein* argued that, given the seriousness of the allegation made, the applicable standard of proof should have reached a very high degree, approximating the criminal law standard of beyond a reasonable doubt. The Panel first concluded that the application of the criminal law standard of proof finds no place in disciplinary doping proceedings. The present author finds this statement to be unfortunate (though essentially true), as *Pechstein* did not invoke a direct application of the criminal law standard, but merely the comfortable satisfaction standard reaching such a degree that would only approach the beyond a reasonable doubt standard. However, the Panel further noted: *"Obviously, the Panel is mindful of the seriousness of the allegations put forward by the ISU but in the Panel's view,* ***it is exactly the same seriousness as any other anti-doping case*** *brought before the CAS and involving blood doping;* ***nothing more, nothing less****."*[59] In the author's view, these conclusions indicate inclination towards flexibility within the comfortable satisfaction

57 See section 5.1.2.
58 Award of the CAS of 7 June 1999, Case 98/211, para. 27.
59 Award of the CAS of 25 November 2009, Case 2009/A/1912&1913, para. 55.

standard. However, it may be asked whether these conclusions suggest an approach that distinguishes between different proceedings or types of disciplinary violations (e.g., match-fixing, corruption, doping) and classifies them into categories. Is there then, within the category given, the same level of proof required to meet the comfortable satisfaction standard? May this hypothetical approach be seen as a combination of the variable (between different categories) and the constant (within each category) approach?

5.1.2 Can the Comfortable Satisfaction Standard Be Equated to the Standard of Beyond a Reasonable Doubt?

If adoption of the variable approach to the comfortable satisfaction standard is assumed, another important question arises, which is largely related to the discussion outlined above about the nature of disciplinary proceedings and the corresponding application of criminal law principles. Can the comfortable satisfaction standard in cases of extremely serious allegations reach a level that is essentially equivalent to the beyond a reasonable doubt standard?

This situation may be illustrated by the cases of *Montgomery and Gaines vs. USADA (United States Anti-Doping Agency)*. These cases were ground-breaking for the CAS as they were the first ever doping cases based solely on circumstantial evidence. The accused athletes had never tested positive for the presence of a prohibited substance.

Before the evidence adduced could be assessed, the question of the applicable standard of proof had to be resolved. This issue itself generated a fiery debate due to the change in the applicable standard around that time. Another bone of contention was the question of the relevant point in time to be considered. During the proceedings before the USADA and the CAS, the comfortable satisfaction standard was applied by the panels, since it was already explicitly enshrined within the WADC at that time. The athletes and their attorneys disdained the shift to this lower standard, since the formerly applicable regulations provided for the criminal law standard of beyond a reasonable doubt. This standard applied even at the time of the alleged anti-doping rule violation, leading some to argue that *"this*

is the classic case of moving the goal line in the middle of the game".[60] This view was based on a decision rendered by the U.S. Supreme Court that considered the questions of burden of proof and standard of proof to be substantive law rules that could not be applied retroactively.[61] However, the Panel declined to follow this view on the substantive law nature of the standard of proof rule.

The Panel addressed the issue of the applicable standard of proof extensively during the third preliminary hearing before reaching a decision on the merits. From the wording of the conclusions of that decision, it appears as if the Panel rejected any significance in the distinction between the different standards of proof, stating that the debate on the standard of proof *"looms larger in theory than practice"*[62] and that there is not *"necessarily a great gulf between proof in civil and criminal matters"*[63]. *Greene*, however, pointed out the panel's failure to clearly state the applicable standard of proof.[64] In its decision on procedural and evidentiary issues, the panel merely stated that *"even if the so-called 'lesser', 'civil' standard were to apply – namely, proof on the balance of probability, or, in the specific context in which these cases arise, proof to the comfortable satisfaction of the Panel bearing in mind the seriousness of the allegation which is made* […] *– an extremely high level of proof would be required to 'comfortably satisfy' the Panel that Respondents were guilty of the serious conduct of which they stand accused"*.[65] This statement could be seen as indicating that the Panel preferred to apply the criminal law standard of beyond a reasonable doubt. Another point of view might construe it to mean that the Panel's intention was merely to demonstrate the absence of any practical difference between those standards in the particular case. The ambiguity of these conclusions

60 ROBBINS, L. OLYMPICS; Lower Standard of Proof Angers Athletes and Lawyers. *The New York Times* [online]. 15. 6. 2004 [cit. 30. 5. 2021]. Available at: https://www.nytimes.com/2004/06/15/sports/olympics-lower-standard-of-proof-angers-athletes-and-lawyers.html

61 CAS Decision on Evidentiary and Procedural Issues of 4 March 2005 in Case 2004/O/645, p. 21.

62 Ibid., p. 24.

63 Ibid., p. 25.

64 GREENE, P. J. USADA vs. Montgomery: Paving a New Path to Conviction in Olympic Doping Cases. *Maine Law Review*, 2007, Vol. 59, no. 1, p. 164.

65 CAS Decision on Evidentiary and Procedural Issues of 4 March 2005 in Case 2004/O/645, p. 24.

remained throughout the proceedings, as even the decision on the merits circumvented the issue by stating that *"the Panel has* ***no doubt*** *in this case, and is* ***more than comfortably satisfied****, that M. committed the doping offence in question"*.[66] However, the reference to the comfortable satisfaction standard in this conclusion may, in the author's view, be seen as a reference to a starting point that has been met or even surpassed beyond reasonable doubt.

Should we agree with the above, it would seem that the answer to the question posed in the title of this section is clear. If an allegation is extremely serious, then even the comfortable satisfaction standard rises to such a high level that it becomes indistinguishable from the standard of beyond a reasonable doubt. The same conclusion was reached by the Panel in the case of *Tyler Hamilton* who committed an anti-doping rule violation when he tested positive for the presence of transfused blood without the necessity of medical intervention. In relation to the applicable standard of proof, the Panel concluded that *"since the issue in such cases involves the continued livelihood of a dedicated athlete, the comfortable satisfaction standard may not be much different from the standard of beyond a reasonable doubt"*.[67] Parts of the reasoning of the decision on evidentiary and procedural issues in the case of *Montgomery* are reproduced also in other cases, e.g., CAS 2007/A/1286, CAS 2007/A/1288, CAS 2007/A/1289.[68]

There are, however, cases that refuse to follow the proposition that there is no difference between the comfortable satisfaction and the beyond a reasonable doubt standard. The award in the *Essendon* case may serve as an example. The Panel in that case rejected the above-mentioned submissions that *"there is no material difference between proof beyond a reasonable doubt and proof of comfortable satisfaction* […] [since] *the dictum in CAS 2004/O/645 relied upon by the AFL was manifestly and expressly case specific"*.[69]

The present author is of the opinion that the *Montgomery* and *Gaines* cases were indeed unique and that their conclusions regarding the applicable standard of proof were influenced by the criminal background of those

66 Award of the CAS of 13 December 2005, Case 2004/O/645, para. 11.
67 Award of the CAS of 10 February 2006, Case 2005/A/884, para. 47.
68 Award of the CAS of 4 January 2008, Case 2005/A/1286 & 1288 & 1289.
69 Award of the CAS of 11 January 2016, Case 2015/A/4059, para. 105.

and related cases. Moreover, the precise determination of the applicable standard of proof remains uncertain. Should the conclusions presented be read as implying that the criminal standard of beyond a reasonable doubt was applied, such an approach would have to be considered doctrinally incorrect, as it would not only be inconsistent with the specific disciplinary nature of the CAS proceedings, but would also fail to follow the manner in which applicable standard of proof is determined in the CAS proceedings.[70] If, on the other hand, it is assumed that the Panel utilized the comfortable satisfaction standard as a starting point, the present author argues that it is still erroneous to equate this standard to the proof of beyond a reasonable doubt because it fails to take into consideration other specific elements, including, e.g., the limited investigatory powers of associations that would hinder the fight against doping. Moreover, the definition provided for in Art. 3 para. 1 WADC clearly states that the comfortable satisfaction standard is in all cases less than proof beyond a reasonable doubt.

5.1.3 Constant

The second fundamental approach treats the comfortable satisfaction standard as a constant one. This view is founded on the assumption that it is a fixed standard that lies somewhere between the beyond a reasonable doubt and the balance of probabilities standard. Thus, in contrast to the variable approach, the seriousness of the allegation made does not affect the required level of proof necessary to achieve comfortable satisfaction. Yet even in this case it is not clear where exactly this standard lies.

This approach may be illustrated by the case of *Legkov vs. IOC*. Alexander Legkov is a professional Russian cross-country skier who participated in the Sochi Olympic Games. Urine samples collected in the course of the Games neither indicated the presence of any prohibited substance, nor did they indicate any other anti-doping rule violation. However, the allegations made against the athlete were part of the infamous doping scandal. The objective of the proceedings against Legkov was therefore to prove his involvement in the doping scheme.

70 The applicable regulations in that case explicitly incorporated provisions of the WADC, including its comfortable satisfaction standard of proof.

The arbitral panel utilized the comfortable satisfaction standard of proof in conformity with the constant CAS jurisprudence, including its emphasis on consideration of the seriousness of the allegations made. In this case, however, this requirement was perceived differently from the above-mentioned variable perception regarding the necessary level of proof. The Panel was aware of the existence of this approach to the comfortable satisfaction standard and for that reason reiterated its conclusions that the comfortable satisfaction is a kind of sliding scale. Nevertheless, the Panel rejected this assertion, stating that *"it is important to be clear that the standard of proof itself is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven."*[71] In other words, on the one hand, the Panel acknowledges the need to consider the seriousness of the allegations made, but on the other hand, it rejects that this consideration should translate into an increase or decrease in the level of proof required. According to the Panel, the seriousness of the allegations shall be reflected in the evidence adduced to support the party's claims. Thus, the constant approach to the comfortable satisfaction standard may be broadly defined as an approach whereby flexibility and consideration of seriousness of the allegations do not take place on a scale between different standards of proof but within the applicable standard itself, that is immutable in terms of the level of proof required, but its fulfillment requires varying degrees of cogent evidence. The more serious the allegations, the more cogent the evidence presented must be. Only then is it possible for the panel to pronounce its comfortable satisfaction.

According to the Panel, the concept of *"cogent evidence"* is to be understood as evidence that is clear, logical, and persuasive.[72] Among other things, this statement suggests that the amount of evidence presented should not be considered a primary factor in adjudication. On the other hand, it is possible that persuasiveness of the evidence may arise precisely from the totality of the evidence presented, particularly if that evidence is circumstantial in nature. This is particularly evident in cases of a concealed doping scheme

71 Award of the CAS of 23 April 2018, Case 2017/A/5379, para. 706.
72 Ibid., para. 605.

where the arbitral panel concluded that the existence of a doping scheme is constructed in such a way as to conceal the evidence of its existence as much as possible. The more successful the scheme, the less direct evidence available for disciplinary proceedings. These conclusions were consistently applied, particularly in proceedings against athletes participating in the Olympic doping scheme[73] but also in a number of other cases[74].

Not all cases advocating the constant approach explicitly follow the above conclusions. Nevertheless, it is possible to draw similar conclusions from their own wording. For instance, in case *UCI (International Cycling Union) vs. T. & OCS (Olympic Committee of Slovenia)*, it was stated: *"Application of the standard to any particular set of facts may produce different results depending on those facts. But the standard itself is uniform, irrespective of the facts."*[75] Other cases may not be as explicit but their inclination towards the constant approach may be inferred from their emphasis on the cogency of the evidence presented. This may be illustrated by the case of *Dobud vs. FINA (International Swimming Federation),* where the Panel concluded that *"the less probable the matter sought to be proved to that standard, the more cogent must be the evidence to prove it"*.[76]

6 Consistency Despite Theoretical Differences?

From the foregoing, it is apparent that different approaches to a single standard of proof may indeed be distinguished within CAS awards. It is beyond any doubt that the differences in these approaches should, from a theoretical point of view, be reflected in the practice of decision-making. That is because the variable approach has the effect of increasing or decreasing the required level of proof, which would imply that in cases of very serious allegations, higher demands will be placed on the relevant associations

73 E.g., Award of the CAS, Case 2017/A/5423; Award of the CAS of 11 July 2018, Case 2017/A/5426; Award of the CAS, Case 2017/A/5429; Award of the CAS of 30 November 2018, Case 2017/A/5436; Award of the CAS of 30 November 2018, Case 2017/A/5440; Award of the CAS of 11 July 2018, Case 2017/A/5468; Award of the CAS of 12 September 2018, Case 2017/A/5474; Award of the CAS of 7 November 2018, Case 2018/A/5504; Award of the CAS of 16 November 2018, Case 2018/A/5511 and other.

74 E.g., Award of the CAS of 8 December 2014, Case 2014/A/3630.

75 Award of the CAS of 21 April 2011, Case 2010/A/2235, para. 26.

76 Award of the CAS of 15 March 2016, Case 2015/A/4163, para. 72.

to reach the necessary level, which in turn will provide greater protection to the accused athletes, as the required level of proof will not be so easily met. Conversely, the constant approach remains immutable in terms of the level of proof, which may be met with resentment from the athlete's perspective in cases of serious allegations, as there is no differentiation in terms of the level of proof with regard to the seriousness of the allegations.

However, the present author argues, based on the analysis of selected CAS awards, that these different doctrinal perceptions of the comfortable satisfaction standard do not have practical implications for the conclusions reached by CAS arbitral tribunals.

The author finds support for this conclusion primarily in the dominant position of the CAS as an internationally recognized arbitral institution, which seeks to ensure, *inter alia*, the uniformity in decision-making, as well as legal certainty for all parties involved and compliance with the requirement of equal treatment. According to *Foster*, requirement of consistency is represented by the formulation of general principles that should be applied to all sports associations, i.e., by an attempt to harmonize standards.[77] This observation may be applied to some extent to the comfortable satisfaction standard, which originated in the CAS decision-making practice and has developed from its occasional application to the position of a general standard of proof applied in disciplinary proceedings.

However, formal application of a single standard of proof must be subsequently supported by the decision-making practice of the CAS. This is facilitated by the second aspect of consistency, i.e., in its uniform application through referring to and adopting the conclusions of existing decisions.

It is already apparent from the first glance that CAS awards and respective arbitral panels make numerous references to earlier awards. This has led many scholars to *"recognize the practice as evidence of an emerging lex sportive"*.[78] CAS practice regarding the issue of explicit references to earlier awards has

77 FOSTER, K. Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport's Jurisprudence. *Entertainment and Sports Law Journal* [online]. 27. 6. 2016 [cit. 28. 5. 2021]. Available at: https://www.entsportslawjournal.com/article/id/722/

78 BERSAGEL, A. Is There a Stare Decisis Doctrine in the Court of Arbitration for Sport? An Analysis of Published Awards for Anti-Doping Disputes in Track and Field. *Pepperdine Dispute Resolution Law Journal*, 2012, Vol. 12, no. 2, pp. 189–190.

itself undergone considerable development since its inception. *Kaufmann-Kohler* reproduces the findings of conducted surveys by noting that, of all the publicly available awards issued between 1986 and 2003, only one in six awards cited previous cases, whereas since 2003 almost every award contains one or more references to conclusions reached by previous panels.[79] This is undoubtedly due to the significant increase in the caseload before the CAS.[80] The official statistics show that out of the total of 7,869 cases[81], only 581 of them were issued in the former period, whereas the latter period accounts for 7,288 cases.[82]

However, it must be borne in mind that finding support in previous CAS awards is not a manifestation of a binding doctrine of precedent, in the sense known, for example, in common law countries. In this respect, *Blackshaw* considers this practice of CAS arbitral panels to be guided rather by the interests of comity and legal certainty.[83] After all, the (non-) existence of a formally binding doctrine of precedent has been addressed several times by CAS awards themselves. Perhaps the most apposite is the conclusion reached in the CAS Award in Case 97/176, which was also reproduced in the CAS Award in Case 2008/A/1545: *"In arbitration there is no stare decisis. Nevertheless, the Panel feels that CAS rulings form a valuable body of case law and can contribute to strengthen legal predictability in international sports law. Therefore, although not binding, previous CAS decisions can, and should, be taken into attentive consideration by subsequent CAS panels, in order to help developing legitimate expectations among sports bodies and athletes."*[84] A number of other awards also follow these basic propositions.[85] Yet, one can also find in the doctrine a view

79 KAUFMANN-KOHLER, G. Arbitral Precedent: Dream, Necessity or Excuse? *Arbitration International*, 2007, Vol. 23, no. 3, p. 365.

80 In particular, there has been a massive increase in the number of appeal procedures since 2004, when the WADC came into effect.

81 This is a figure indicating the total number of cases, including *ad hoc* proceedings, mediation, and consultation procedures.

82 CAS Statistics 1986–2020. *Court of Arbitration for Sport* [online]. [cit. 24. 5. 2021]. Available at: https://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2020.pdf

83 BLACKSHAW, I. Towards a 'Lex Sportiva'. *The International Sports Law Journal*, 2011, Vol. 11, no. 3–4, p. 141.

84 Award of the CAS of 16 July 2010, Case 2008/A/1545, para. 53, with explicit reference to Award of the CAS, Case 97/176, para. 40.

85 E.g., Award of the CAS of 13 March 1997, Case 96/149, para. 19; Award of the CAS of 7 July 2008, Case 2008/A/1574, para. 33; Award of the CAS of 28 June 2004, Case 2004/A/628, para. 73.

according to which this practice of CAS panels *"demonstrates the existence of a true stare decisis doctrine within the field of sports arbitration"*.[86] Other authors, in light of the conclusions reached by CAS awards, liken this practice more to the doctrine of *jurisprudence constante*.[87] What is indisputable, however, is that the actual functioning of the CAS panels' adjudication is built on consistency in form and content.

7 Conclusion

In the light of these conclusions, the present author considers that the fundamental question of this contribution may be answered by stating that the existing doctrinal differences in the perception of the comfortable satisfaction standard do not undermine the uniformity and consistency of CAS adjudication and are therefore not particularly problematic in practice.

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86 KAUFMANN-KOHLER, G. Arbitral Precedent: Dream, Necessity or Excuse? *Arbitration International*, 2007, Vol. 23, no. 3, p. 366.

87 BERSAGEL, A. Is There a Stare Decisis Doctrine in the Court of Arbitration for Sport? An Analysis of Published Awards for Anti-Doping Disputes in Track and Field. *Pepperdine Dispute Resolution Law Journal*, 2012, Vol. 12, no. 2, p. 190.

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